

Remarks

Applicant's response to the final Office Action mailed June 19, 2007 is below. Claims 1-9, 11-13, and 15-21 are currently pending in the application. Claims 1-7, 9, 11-13 and 15-21 have been rejected. Applicant thanks the Examiner for allowing claim 8.

I. Amendments to the Specification

The specification is amended to correct typographical errors and matters of form. No new matter is introduced.

II. Amendments to the Claims

Claim 1 is amended. In its prior form, "the first fold line" recited in claim 1 lacked antecedent basis. Applicant amends the claim to clarify "the first fold line" is "the top panel fold line" previously introduced in the claim. No new matter is added. Applicant asks the Examiner to enter the amendment because the amendment places the rejected claim in better form for consideration on appeal. *See* 37 C.F.R. § 1.116(b)(2); MPEP 714.12.

Claim 8 is amended in a comparable manner. No new matter is added. Although the Examiner allowed claim 8 in its prior form, Applicant asks the Examiner to enter the amendment because the amendment does not affect the scope of the claim. Therefore, no additional search or examination is required.

III. Claim Rejections under 35 U.S.C. § 112

Claims 13 and 15-21 were rejected under 35 U.S.C. § 112, first paragraph. Specifically, the Office Action indicated "the recitation in each of [the rejected claims] that the corner posts are rectangular is new matter. The posts are never disclosed as rectangular and, as shown in the drawings, they are not rectangular since they comprise only two sides at a corner of the container." Office Action; page 2.

Applicant traverses. The rectangular corner posts recited in the claims are not new matter. The specification states:

The top panel 150 also may include two corner posts, a first corner post 470 and a second corner post 480. **Each corner post 470, 480 may be substantially square or rectangular in shape, although other shapes may be used. The first corner post 470 may be defined by the first top fold line 210**

and the top panel tab fold line 390 on two sides and by a horizontal first corner post score line 490 and a vertical first corner post score line 500. (The terms "horizontal" and "vertical" are used merely for reference as opposed to an actual orientation.) Likewise, the second corner post 480 may be defined by the second top fold line 220 and the top panel tab fold line 390 on two sides and a horizontal second corner post score line 510 and a vertical second corner post score line 520.

Applicant's specification; para. [0030] (emphasis added). Additionally, the specification states:

The corner posts may include a rectangular shape along the top panel.

The corner posts may include a length on the top panel along the first and the second side panels of about 1.0 centimeter and a length on the top panel along the end panel of about 1.0 centimeter. The corner posts may include a length into the first and the second side panel of about 8.3 centimeters and a length into the end panel of about eight (8) centimeters. The removable portion may include one or more finger cut outs formed therein. The end panel may include a number of tabs.

Applicant's specification; para. [0011] (emphasis added). Further, when the application was originally filed, the claims recited "corner posts" comprising a "rectangle" and "corner flaps" comprising a "rectangle". See Applicant's Specification as filed; claim 10, 14. For at least these reasons, Applicant asks the Examiner to withdraw the rejection.

IV. Claim Rejections under 35 U.S.C. § 103

A. Rejections in view of Bone

Claims 1, 3, 13 and 15-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2004/0112948 to Bone ("Bone"). Applicant traverses this rejection. Bone does not teach or suggest the "rectangular corner flaps" of claim 1 or the "rectangular corner posts" of claim 13. Further, these elements are not an obvious matter of design choice as alleged in the Office Action.

Regarding claim 1, the rectangular corner flaps assist in retaining products within the container. Due to the rectangular shape of the corner flaps, the product retained in the carton of claim 1 is adjacent a relatively larger surface area of the corner flap than a product retained in the carton of Bone. The larger surface area increases the ability of the corner flap to retain the product under the corner flap. Thus, the rectangular shape of the corner flap improves the retention of the product within the carton. Further, the rectangular shape of the corner flap facilitates separating the removable portion from the top panel along the score lines. On the

contrary, the removable portion of Bone may be relatively more difficult to remove, due to the angled nature of the corner flap.

For the same reasons, the rectangular corner posts of claim 13 are not an obvious matter of design choice. Further, the rectangular corner posts enclose the products in three dimensions. Applicant's specification; para. [0037]. Therefore, the rectangular shape of the corner posts facilitate retaining the products in the carton. *Id.* The rectangular corner posts also add structural strength to the carton, so that the carton has improved stackability. *Id.* For at least these reasons, the rejected claims are patentable over Bone.

B. Rejections in view of Mazocky

Claims 1, 3, 13, 16, 17, 19 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over European Patent No. 66,029 to Mazocky ("Mazocky"). Applicant traverses this rejection for the reasons described above.

Further, regarding claim 1, Mazocky does not teach "a first **score line** extending across the top panel from the first side panel to the second side panel" (emphasis added). Mazocky appears to teach **fold lines** extending across the top panel from the first side panel to the second side panel. See Mazocky; Fig. 3 (wherein long dashes appear to indicate fold lines, short dashes appear to indicate score lines, and the two lines extending across the top panel are indicated by long dashes instead of short dashes.) If the rejection is maintained, Applicant asks the Examiner to identify the portions of the Mazocky disclosure that teach the score line of the claim.

Regarding claim 20, Mazocky does not teach "a plurality of score lines extending along the top enclosure, **the pair of side enclosures, and the end enclosure**" (emphasis added). Mazocky teaches score lines that are confined to the **top enclosure alone**. See Mazocky; Fig. 1. For at least these reasons, the rejected claims are patentable over Mazocky.

C. Rejections in view of Quaintance

Claims 1-3, 6, 7, 13, 16, 17 and 19-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable by U.S. Patent No. 5,520,325 to Quaintance ("Quaintance"). Applicant traverses this rejection. As an initial matter, the Office Action states Quaintance "anticipates" Applicant's claims. Office Action; pg. 5. However, the Office Action admits "Quaintance does not disclose a rectangular shape to the corner flaps" and further states the rectangular flaps are "an obvious

matter of design choice”. *Id.* Therefore, Quaintance does not “anticipate” Applicant’s claims. Quaintance also does not render obvious Applicant’s claims for reasons described above.

Further, regarding claim 1, Quaintance does not teach “a first score line **extending across the top panel from the first side panel to the second side panel**” (emphasis added). Quaintance teaches score lines that do not extend across the top panel from the first to the second side panel. *See* Quaintance; Fig. 1. For at least these reasons, the rejected claims are patentable over Quaintance.

D. Other Rejections

Claims 11 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bone in view of any one of U.S. Patent No. 2,115,673 to Stompe (“Stompe”), U.S. Patent No. 2,754,047 to Schmidt et al. (“Schmidt”), or U.S. Patent No. to 4,214,660 to Hunt, Jr. (“Hunt”). Applicant traverses this rejection. Each of these claims is patentable for at least the reasons described above.

Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/014887 to Auclair (“Auclair”) in view of U.S. Patent No. 7,104,435 to Holley, Jr. (“Holley”) and any one of Stompe, Schmidt or Hunt. Applicant traverses this rejection. Claim 12 is patentable for at least the reasons described above.

V. Claim Rejections under 35 U.S.C. § 102

Claims 1-7, 9, 13, 15-17 and 19-21 were rejected under 35 U.S.C. § 102(b) as being anticipated by Auclair. As an initial matter, the Office Action admits “Auclair does not disclose a rectangular shape to the corner flaps” and further states the rectangular flaps are “an obvious matter of design choice”. Office Action; page. 7. Therefore, Auclair does not “anticipate” Applicant’s claims. Further, Auclair does not render obvious Applicant’s claims for reasons described above.

Additionally, Auclair does not teach “a first **score line** extending across the top panel from the first side panel to the second side panel” (emphasis added). Instead, Auclair teaches a **fold line** extending across the top panel from the first side panel to the second side panel. *See* Auclair; Fig. 1. For at least these reasons, the rejected claims are allowable over Auclair.

Conclusion

Upon entry of the amendments described above, claims 1-21 will be pending in the application. Applicant submits the pending claims are novel and are not obvious over the references of record. Therefore, Applicant respectfully asks the Examiner to reconsider the objections and rejections and to allow each of the claims.

Applicant petitions under 37 C.F.R. § 1.136(a) for any extensions of time that are necessary to allow consideration of this response. Further, Applicant authorizes charging any fees to deposit account no. 19-5029. If the Examiner believes a telephone conversation would facilitate the examination of this application, Applicant invites the Examiner to call the Attorney below at any time.

Respectfully submitted,



Deborah K. Butler
Reg. No. 58,353

Date: 16 August 2007
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street NE
Atlanta, Georgia 30309-3996
(404) 853-8088
(404) 853-8806 (fax)